

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
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ELECTRONICALLY FILED  
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DATE FILED: 1/15/2020

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DOMINGO ROSARIO FIGUEROA,	:	
	:	
Petitioner,	:	
	:	16-CV-4469 (VEC)
-against-	:	
	:	<u>ORDER</u>
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	
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VALERIE CAPRONI, United States District Judge:

WHEREAS on June 10, 2016, Petitioner filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Dkt. 1); and

WHEREAS on September 12, 2019, Petitioner moved for leave to amend his Petition to add a claim that the Count 8 conviction must be vacated in light of *Rehaif v. United States*, 139 S. Ct. 2191 (2019), (Dkt. 23); and

WHEREAS on September 24, 2019, the Government submitted a letter opposing Petitioner's application for leave to amend (Dkt. 25);

IT IS HEREBY ORDERED THAT:

1. The application for leave to amend is GRANTED. Although Petitioner concedes that he did not raise the argument on direct appeal, Petitioner has established cause and prejudice for the procedural default. Cause exists when the Supreme Court “‘overturns a longstanding and wide practice to which th[e] Court ha[d] not spoken, but which a near-unanimous body of lower court authority had expressly approved.’” *Reed v. Ross*, 468 U.S. 1, 17 (1984) (quoting *United States v. Johnson*, 457 U.S. 537, 551 (1982)). *Rehaif* overturned an interpretation of 18 U.S.C. § 922(g) that had “been adopted by every single

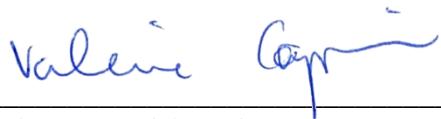
Court of Appeals to address the question.” 139 S. Ct. at 2201 (Alito J., dissenting).

Petitioner has established prejudice because the jury was expressly instructed that it was “not necessary that the government prove that defendant *knew* that the crime was punishable by imprisonment for a period of more than one year.” *See* Dkt. 27 at 5 (emphasis added).

2. Petitioner must file an amended petition by **February 7, 2020**.
3. The Government’s opposition to the amended petition, if any, is due by **February 21, 2020**. If the Government files an opposition, Petitioner may file a reply no later than **March 6, 2020**.

**SO ORDERED.**

**Date: January 15, 2020**  
**New York, New York**

  
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**VALERIE CAPRONI**  
**United States District Judge**